



SMALL BUSINESS & NONPROFIT CLINIC

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**February 16, 2009**

**Charitable Gaming – Games of Chance versus Games of Skill**

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Very few areas of the law are as regulated as gaming; from the location in which gaming activities can be conducted, to the interval in which they can be conducted, to who can conduct them, every facet of gaming is regulated. With the recent explosion in popularity of games such as Texas holdem poker, charitable organizations have increasingly sought to use gaming as a revenue stream. Distinctions in the rules are made between such things as Bingo, Raffles, and Millionaire Parties with all these types of gaming having to be approved virtually every time that they are conducted.

But this determination leads to an important question; is there a distinction between Games of Chance and Games of Skill as to whether or not a given event will be approved? If there is, what effect would a ruling on whether or not poker is a game of chance versus a game of skill have on such rules? Will Millionaire Parties no longer be able to host Texas holdem tournaments, if poker is ruled a game of skill instead of a game of chance?

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All Charitable Gaming in Michigan is covered by the Traxler-McCauley-Law-Bowman Bingo Act. (“the Act”) M.C.L. 432. Under the Act, Michigan Charitable organizations are authorized to conduct charitable gaming activities subject to the Act and subsequent rules promulgated by the Commissioner of State Lottery. M.C.L. 432(b)(8). The Act defines many different types of gaming, Bingo games, Charity games, and Millionaire Parties. Bingo is defined in the Act as, “...a *game of chance* commonly known as bingo in which prizes are awarded on the basis of designated numbers or symbols conforming to numbers or symbols selected at random.” M.C.L. 432.102(2) (emphasis added). Charity games are defined as, “a random resale of a series of charity game tickets.” M.C.L. 432.102(4). Charity game tickets are further defined as, “a ticket commonly referred to as a break open ticket or pull-tab that is approved and acquired by the bureau and is distributed and sold by the bureau or a licensed supplier to a qualified organization a portion of which is removed to discover whether the ticket is a winning ticket and whether the purchases may be awarded a prize.” M.C.L. 432.102(5). Finally, Millionaire Parties are defined as “an event at which wagers are placed upon *games of chance* customarily associated with a gambling casino through use of imitation money or chips that have a nominal value equal to or great than the value of the currency for which they can be exchanged.” M.C.L. 432.103a(8) (emphasis added).

Already in these simple definitions of the different gaming activities there is a distinction being drawn between games of chance, and other games, but the distinction between these games of chance and other games does not end at the definitions in the Act, it also finds its way into the rules promulgated in connection with the Act. Rule 615 states that, “[s]econdary games of chance approved in writing by the bureau may be

conducted with charity game tickets.” Rule 432.21615. These secondary games of chance are in effect raffles within raffles where a person who has won a prize with a charity game ticket may elect to enter a second drawing in lieu of obtaining whatever given prize they would normally be entitled to, for the opportunity to win a potentially greater prize, by entering a drawing where others who also won charity game tickets at an event, a drawing that is specified as to be purely by chance.

But even when no express language indicating a game of chance is given as in the case of the secondary games of chance provision of the rules, other places in the rules indicate that non-traditional games of chance will be subject to a different level of questioning. For instance the definition of “raffle” which is specified in the rules (and absent from the Act) states that a raffle is an, “...event for which raffle tickets are sold, a winner or winners are determined, either by randomly selecting stubs from all of the raffle tickets sold for an event or by an alternative method that is approved in writing by the bureau...” This language of alternate method being approved in writing by the bureau seems to indicate that while traditional chance raffles are allowed with little question, raffles which use an alternate method of assigning tickets such as a skill method may not be approved, and in fact that directives in connection with the rules have only specifically allowed other chance alternative raffle methods such as rubber duck races and picking a square in which you think an animal will place its dropping(although perhaps that could be considered skillful if knowledge of the particular animal type would indicate its preference for given areas of a pen).

All of the above seems to point strongly in favor of only games of chance being subject to the purview of the Michigan charitable gaming laws and regulations. So where

does that leave potential games of skill like guessing the number of marble in a fish bowl or other games that traditionally find themselves in a carnival instead of in a casino? The fish bowl marble guessing scenario could potentially be seen to be like the raffle with an alternative method of winner determination, although it would depend on how one picked a winner of the fish bowl guessing and how the prize was distributed. What about something like guessing someone's weight and if you are within a certain percentage winning a prize, in which category would that fall? For the case of weight guessing, it seems that since it is a game of skill absent from the charitable gaming laws and regulations the weight guessing would be allowed an allowed activity, unless some sort of local ordinance forbids it. So too, any other game of skill you could think of would be allowed absent such local ordinances.

Traditional casino games, instead of things such as bingo and pull-tabs, create an even more complicated situation. The definition for millionaire parties specifically mentions games of games that are commonly associated with a gambling casino. It is of no doubt that games such as poker, roulette and blackjack are traditionally considered to be casino games and rules that are promulgated specifically mention the first two. But are these games truly games of chance or are they games of skill not subject to the millionaire party gaming law? Would a ruling by a court of competent jurisdiction in Michigan that poker is in fact a game of skill open up the possibility that Millionaire Parties would no longer be able to host poker tournaments? The rules promulgated with respect to Millionaire Parties leave these questions in doubt. Rule 406 states that, "[o]nly authorized equipment and games may be used at a millionaire party." R 432.21406. (5) and goes on to say that, "[a]ll of the following millionaire party equipment and games are

authorized: (a) Wheels. (b) Roulette. (c) Dice games where players compete only against the licensee. (d) Twenty-one or blackjack. (e) Card games approved in writing by the bureau. (f) Any other equipment or games approved in writing by the bureau.” According to these rules, games whose primary skill is derived from betting strategy such as wheels, roulette and craps (the most common dice game played in a casino) are allowed on their face as well as a game which involve both betting strategy and some skill (knowing when to hit or stay in a game of twenty-one) but other games must be specifically approved.

In wheels, roulette, craps and blackjack one does not actually play against other players (even though in some cases their cards and selections sometimes have affect on the odds of the game) and instead a player’s fortunes rise and fall only with their own luck and not the luck of others which indicates that a determination has probably been made on the part of the rulemakers that there is a distinction between player-versus-player interaction and player-versus-house interaction with the latter being more allowable than the former. This calculus of player-versus-player and player-versus-house, however, seems to not be the only thing at play here. The distinction here seems to not rest solely on a player-versus-player/player-versus-house determination. This is manifest in the fact that there is a specific distinction made between card games and dice games. Dice games are always allowed as long as they are played against the house, but card games must always be approved by the Bureau (with the exception of blackjack). Why is there this distinction made between card and dice games? If it was simply a matter of player-versus-player/player-versus-house then the promulgators could have just as easily specified that all card games where the player plays solely against the licensee would be specifically allowed, and not just the limited case of blackjack, instead the promulgators

made card games distinct from dice games and subjected them to the same increase scrutiny that non-traditional raffles face, specific approval. This potentially speaks to the fact that games of chance versus skill considerations are at play here, since there is something fundamentally different in the odds calculations between card and dice games. Dice games usually involve pure luck since each roll of a die is independent of each other one and while some games may involve some sort of skill, such as dice poker where one can select which dice to keep for the next roll and which to re-roll, no amount of selection of the previous roll will change the fundamental odds of for instead rolling a one on a six-sided die. Card games on the other hand involve not just odds calculations like dice games, but also memory skills to recall which cards have been played and remain in a given deck.

The distinction between games of skill and games of chance in a millionaire party setting may currently ultimately be unimportant, however, since the most popular game where one plays against the house involving a high level of skill, blackjack, is specifically allowed, and the most popular poker game, Texas holdem, has been allowed, both in cash game and tournament game, by directives based on these rules. What the Bureau would do in the case of other games remains to be seen, but they would most likely be approved provided that a description of the game was such that it conformed much to the rules that are laid out in the directives regarding Texas holdem. As stated above, however. This could all change if Michigan were to rule that Texas holdem is a game of skill and then someone were to challenge its status in millionaire events.

The final question then becomes, how likely is it that Michigan will change the status of Texas holdem such that it could potentially be disallowed at Millionaire parties?

On February 13<sup>th</sup>, a judge in South Carolina heard arguments by the parties on whether or not poker is a game of chance or skill in the case of 5-men arrested for having a poker game in one of their garages. This could potentially be the first time ever that poker is ruled a game of skill instead of a game of chance, and could potentially begin a trend that could eventually reach Michigan and change the way charitable gaming is conducted in the state.